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Bay Area Air Quality Management District

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Proposed Amendments to BAAQMD Regulation 2, Rule 6, Major Facility Review, and

Manual of Procedures, Volume II, Part 3, Major Facility Review Permit Requirements

Staff Report

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STAFF REPORT

Regulation 2, Rule 6
Major Facility Review, and

Manual of Procedures, Volume II, Part 3,
Major Facility Review Permit Requirements

EXECUTIVE SUMMARY

The District proposes to amend Regulation 2, Rule 6, Major Facility Review, and Manual of Procedures, Volume II, Part 3, Major Facility Review Permit Requirements (MOP) to resolve the status of smaller facilities in regard to the Title V requirements.

Major Facility Review is the District program that implements Title V of the Federal Air Act, Permits. It applies to major facilities and certain other facilities. Major facilities are facilities with a potential to emit, as defined, of 100 tons per year of any regulated air pollutant or 10 tons per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants.

The current rule defers application from smaller major facilities until July 24, 1999. When the deferral runs out, applicability is based on facility's potential to emit more than 100 tons per year of a regulated air pollutant, 10 tons per year of a hazardous air pollutant, or 25 tons per year of a combination of hazardous air pollutants. The new revision will permanently exempt facilities with actual emissions that remain below 25% of the above thresholds.

The District contains approximately 6200 permitted plants or facilities, excluding facilities that are exclusively gasoline dispensing facilities. At this time, there are 91 recognized Title V facilities, 29 facilities synthetic minor facilities, and about 300 additional facilities that may have emissions over 25% of the Title V thresholds. These additional facilities will be required to evaluate their potential to emit or apply for Title V or synthetic minor permits.

Changes to the rule will also be made in order to:

- Resolve some of the issues identified by EPA as obstacles to final approval of the District's Title V program.
- Exempt portable engines and other equipment that are not subject to District permits.

- Allow the use of non-federally enforceable limits to limit potential to emit in accordance with the D.C. Circuit Court's 1995 decision in National Mining Association vs EPA.
- Delete the federal emission trading provisions.
- Clarify the procedure for issuing a Title V permit to a plant that is out of compliance with an applicable requirement.
- Approve the synthetic minor program for authorization of voluntary limits for purposes other than avoiding Title V requirements.
- Delete public notice requirements for synthetic minor permits.
- Use the permit shield to streamline monitoring, recordkeeping, and reporting requirements.
- Require facilities to obtain revisions to the Title V permits before making changes to operations.
- Allow facilities to reference information that has been previously submitted to the District or is readily available in their previous applications.
- Make minor changes to improve definitions, clarity and implementation.

The synthetic minor provisions have been changed to make the program easier to implement. The District will petition the EPA for withdrawal of the synthetic minor provisions from the State Implementation Plan (SIP). The new provisions will allow the District to issue synthetic minor permits without public notice, and therefore streamline the issuance of permits and permit modifications.

BACKGROUND

Regulation 2, Rule 6

Rule Background

The Board originally adopted Regulation 2, Rule 6, Major Facility Review, and the Manual of Procedures (MOP), Volume II, Part 3, Major Facility Review Permit Requirements, on November 3, 1993 to fulfill the requirement to implement a Title V program in the Bay Area. This program requires certain facilities to obtain federal operating permits.

The rule now applies to major facilities, acid rain facilities, subject solid waste incinerators per section 129 of the Federal Clean Air Act, facilities in a source category designated by EPA, and synthetic minor facilities. This version of the rule will add requirements for facilities that have actual emissions that are 25% or more of the major source thresholds.

Rule Amendments

1) One of the difficult issues raised by the Title V program is that of applicability. The federal rule bases applicability on "potential to emit (PTE)." PTE has not been defined for many facilities. The original rule deferred the smaller facilities based on actual emissions. During the deferral, staff intended to determine PTE for these facilities and make final applicability determinations.

   In 1995, the Air Resources Board attempted to solve the problem by negotiating a "prohibitory rule" with EPA. This rule exempted facilities with actual emissions less than 50% of the thresholds, but required extensive recordkeeping and reporting for all facilities with actual emissions greater than 5% of the thresholds for regulated air pollutants or 20% of the thresholds for hazardous air pollutants. The District would have to make a commitment to ask for and review full updates for all sources at all facilities, including an accounting for exempt sources. The District does not currently have the resources to expand data collection from the facilities.

   Instead, this version of the rule exempts facilities that have actual emissions that are and have been below 25% of the thresholds. This strategy affects fewer facilities than the prohibitory rule and therefore is less resource intensive for both Bay Area industry and the District. The new facilities that are affected are:

   - facilities with emissions between 25 and 50 tons per year of a regulated air pollutant

- facilities with emissions between 2.5 and 7 tons per year of a hazardous air pollutant
- facilities with emissions between 12.5 and 15 tons per year of a combination of hazardous air pollutants

These number about 300.

2) EPA identified a number of issues as obstacles to full approval of the District's Title V program. This rule revision addresses the following:

- Changes to compliance certification language
- Addition of a provision that requires certification of all monitoring reports and compliance certifications by a responsible official
- Addition of a provision that requires compliance certifications more frequently than annually if required by a particular applicable requirement
- Notice to affected states (This provision will only be used if an Indian tribe applies for statehood in, or within 50 miles, of the Bay Area District. The other states, Nevada and Oregon are too distant to be directly affected by a Bay Area permit.)
- Deletion of "but not limited to" from the definition of administrative amendment.
- Addition of a provision that a facility may not change their operation prior to completion of a permit revision, if the permit expressly prohibits the particular change.
- Elimination of an extended review period for minor permit revisions
- Provision for public notice "by other means" than a newspaper notice "if necessary to assure adequate notice."

3) The new rule revisions exempt off-road engine as defined by EPA and ARB registered portable engines. These engines are not subject to District permits.

4) The previous rule and MOP chapter explain that only federally-enforceable limitations on PTE could be used in making applicability determinations. However, the requirement for federal enforceability was struck down by the D.C. Circuit Court in 1995 as a result of the National Mining Association Case #95-1006. The rule and MOP have been changed to use locally-enforceable as well as federally enforceable limitations in determining PTE.

5) The federal emission trading provisions have been deleted.

6) The Federal Title V regulations have provisions for issuing permits to non-complying facilities as long as a "schedule of compliance" showing how the facility will achieve compliance is included in the permit. However, Section 43201 of California's Health and Safety Code stipulates that a Title V permit cannot be issued to a facility that is out of compliance with a requirement unless the facility is operating under a variance or an order of abatement. The MOP now explains that the non-complying facility must seek a variance or that

the District must seek an order of abatement before a "schedule of compliance" can be inserted into the permit and the permit issued.

7) The new rule allows the use of synthetic minor limits to avoid requirements other than Title V.

8) The public notice requirements for synthetic minor permits have been deleted. Public notice is one of the requirements for a FESOP (federally enforceable state operating permit). Public notice is slow and expensive. It may be appropriate for issuance of the initial permit, but unreasonable for the many small changes at the synthetic minor facilities. It is not required by federal regulations directly. The resolution of the 1995 National Mining Association case allows the use of locally enforceable permits to limit potential to emit. Also, a requirement for public notice would make the use of synthetic minor limits impractical for limits on a source rather than an entire facility (item 7).

9) EPA has issued guidance that allows the Title V permit to subsume the monitoring requirement for a standard if the monitoring is adequate for a more stringent standard. The permit shield is used to shield the facility from the duplicative monitoring. This provision has been added to the rule and MOP and can be used at the applicant's request.

10) The previous version of the rule allowed facilities to submit applications for significant permit revisions twelve months after the start of operations. This is allowed by 40 CFR 70.6(a) which allows the Title V permit to be revised after a facility has been modified if there is preconstruction review in accordance with parts C and D of the Clean Air Act. In the Bay Area, we do fulfill these requirements. However, the rule has been changed to say that the facility must apply before commencing the change. The reason is to merge the Title V and NSR application process so that one public notice will serve both for the major modification under New Source Review and Title V. EPA has also asked us to add that the revision must be complete before starting operation if the permit prohibits the change, which we have.

11) The new rule allows facilities to reference readily available information in their applications. The MOP adds a discussion of "administratively complete" applications. EPA guidance allows local agencies to declare an application "administratively complete" if there is sufficient information to start work on the permit. The new provisions clarify this position, explain the minimum requirements, and explain that the application may be declared incomplete if the District requests information to finish the permit and it is not submitted in a timely manner. This is important because Federal regulations and the District rule do not allow operation without either a Title V permit or submittal of a complete application.

12) Minor changes have also been made to improve definitions, clarity, and implementation.

EMISSIONS AND EMISSION REDUCTIONS

Emission Reductions Achieved by the Rule

Emissions will not be changed by the change in the rule. The obligation that is deferred is the administrative obligation to apply for a Major Facility Review permit. The emission limitations that apply to the facility will not change with issuance of a Title V permit.

ECONOMIC IMPACTS

Socioeconomic Impacts

Subdivision (a) of Health and Safety Code section 40728.5 states:

> (a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.

Since the change in the rule will have no impact on air quality or emissions limitations, an assessment of the socioeconomic impacts of the amendment are not required.

Incremental Costs

Under Health and Safety Code Section 40920.6, the District is required to perform an incremental cost analysis for a proposed rule if the purpose of the rule is to meet the requirement for best available retrofit control technology or for a feasible measure pursuant to Section 40914. Since this amendment is neither, an incremental cost analysis is not required.

ENVIRONMENTAL IMPACTS

The District has determined that these amendments to Regulation 2, Rule 6 are exempt from CEQA pursuant to State CEQA Guidelines Section 15061, subd. (b)(3), and Section 15321.

The Title V permitting program is an administrative program that gives EPA staff oversight and enforcement authority over larger industrial facilities. Although the EPA may impose monitoring or recordkeeping requirements, the Title V permitting program does not add new or more stringent regulatory requirements for the sources themselves. Consequently, they can therefore be seen with certainty to have no environmental impacts and are exempt under Guidelines Section 15061, subd (b)(3). The District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

REGULATORY IMPACTS

AB 1061, which was signed by the Governor in September 1997 and is effective January 1, 1998, adds Section 40727.2 to the Health and Safety Code and imposes new requirements on the adoption, amendment, or repeal of air district regulations. The bill requires a district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The district must then note any differences between these existing requirements and the requirements imposed by the proposed change. Where the district proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements, the district may simply note this fact and avoid the analysis otherwise required by the bill.

Regulation 2, Rule 6 and the Manual of Procedures, Volume II, Part 3, implement a federal program that has been delegated to the District. There are no state or federal rules that directly impose similar requirements. Therefore, the analysis is not required.

Pursuant to Section 40727 of the California Health and Safety Code, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments are:

- Necessary
- Authorized by Sections 40000, 40001, 40702, and 40725 through 40728 of the California Health and Safety Code;
- Written or displayed so that its meaning can be easily understood by the persons directly affected by it;
- Consistent with other District rules, and not in conflict with state or federal law;
- Non-duplicative of other statutes, rules, or regulations; and are implementing, interpreting, or making specific the provisions of California Health and Safety Code Sections 40000 and 40702.

The proposed amendments have met all legal noticing requirements and have been discussed with all interested parties. District staff recommends adoption of the

proposed amendments to Regulation 2, Rule 6, Major Facility Review, and to the Manual of Procedures, Volume II, Part 3, Major Facility Review Requirements.

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